



World Council of Churches

General Secretariat

150 route de Ferney, PO Box 2100
CH-1211 Geneva 2, Switzerland
Phone: +41 22 791 6111 Fax: +41 22 791 0361
Email: infowcc@wcc-coe.org www.oikoumene.org

Direct phone: +41 22 791 6285
Direct e-mail: Beth.Godfrey@wcc-coe.org

Comment on the OTP Environmental Crimes Policy

16 March 2024

Submission to the Prosecutor of the International Criminal Court

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Introduction

Globally, there exists two significant obstacles to action for climate justice and the urgently needed transition to renewable energy. These are disinformation about climate change, and the continued financing of fossil fuel extraction. The first promotes climate change denial, and the other expands fossil fuel exploitation. Their devastating effects continue to obstruct efforts to address the climate emergency. Leaders in fossil fuel companies who actively promote climate disinformation and those who continue to finance fossil fuel industries have put the world's current and future inhabitants in danger and should be held accountable.

Following the World Council of Churches' (WCC's) submission "Climate Change Disinformation: The Need for Legal Development" to the International Criminal Court (ICC) in December 2023, the WCC welcomes the new policy initiative by the ICC Office of the Prosecutor (OTP) to advance accountability for environmental crimes and their consequences under the Rome Statute. Specifically, the WCC proposes holding accountable those who knowingly promote disinformation on climate change, and who finance fossil fuel expansion despite the scientific consensus regarding the existential threats posed by fossil fuel exploitation. The submission is anchored in the gravity of the human suffering, displacement, deaths and environmental destruction attributable to such deliberate disinformation and deleterious investments, and the impunity currently enjoyed by those responsible.

The WCC represents over 580 million people in more than 120 countries. It is a worldwide fellowship of churches with 75 years of experience pursuing justice, peace, human rights and care for Creation. Through its 352 member churches, the WCC works at the grassroots for a more equitable society. Since the 1970s, the WCC has contributed to developing the concept of 'sustainable communities'. The WCC promoted the adoption of the United Nations Framework Convention on Climate Change (UNFCCC) in 1992, and has been actively engaged in all UN climate change conferences. Over the years, the WCC has helped foster a movement for climate justice through grassroots, regional, and global collaboration, together with many ecumenical, interfaith and civil society partners.

1. Background

Leaders of fossil fuel companies have known since the 1970s that the expansion of fossil fuels will generate globally catastrophic climate change because of the carbon dioxide (CO₂) emissions from fossil fuel use, resulting in global warming. They had evidence that expanding fossil fuels will cause floods in coastal cities, contribute to mass famine, and render whole regions of the planet inhabitable. They knew billions of people would be displaced as a consequence. Rather than alerting the public and curtailing their operations, those leaders worked to deceive the public and governmental authorities about these foreseeable harms and to prevent regulation of their lethal conduct. Their activities have successfully undermined the national and international political will to ensure global CO₂ emissions peak by 2025 and fall rapidly thereafter, a scientific consensus condition for a sustainably liveable world.¹

Many government officials and ministries still allow and support the financing of fossil fuel expansion—even after the release of evidence from the Intergovernmental Panel on Climate Change (IPCC)² and warnings by the World Meteorological Organization (WMO)³ and the International Energy Agency (IEA) that there must not be any new investments into fossil fuels. Such support and financing of new extraction and exploitation are a consequence of the industry’s self-serving disinformation, and serve the very opposite of requirements for human survival and ecological sustainability. According to the IPCC, fossil fuels are responsible for more than 75 percent of the world’s greenhouse gas emissions⁴. As the UN Secretary General Antonio Guterres has stated, “The scientific and moral imperative is clear: there must be no new investment in fossil fuel expansion, including production, infrastructure and exploration.” However, the President of COP28, Sultan Al Jaber, claimed that “no science” indicates that phasing out fossil fuels is necessary to keep global warming under a critical threshold. This illustrates the impunity enjoyed by those who disregard scientific evidence about environmental damage and climate justice and

¹“Emissions Must Peak before 2025 for 'Liveable Future', UN Report Says,” *France24*, 4 April 2022, <https://www.france24.com/en/environment/20220404-emissions-must-peak-before-2025-for-liveable-future-un-report-says>; “Scientists Deliver ‘Final Warning’ on Climate Crisis: Act Now or It’s Too Late,” *The Guardian*, 20 March 2023, <https://www.theguardian.com/environment/2023/mar/20/ipcc-climate-crisis-report-delivers-final-warning-on-15c>.

² International Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change: IPCC Sixth Assessment Report* (IPCC, 2022), <https://www.ipcc.ch/report/sixth-assessment-report-working-group-3/>.

³ World Meteorological Organization, “Press Release: United in Science: We Are Heading in the Wrong Direction,” 13 September 2022, <https://www.undrr.org/news/united-science-2022-we-are-heading-wrong-direction>.

⁴ Causes and Effects of Climate Change, United Nations <https://www.un.org/en/climatechange/science/causes-effects-climate-change>

knowingly promote disinformation about climate change.⁵

Acts of disinformation have already contributed to severe impacts on people and ecosystems that could have been avoided. Today, the climate change that was forecast has already killed millions of people⁶, and it is expected to become increasingly deadly in the foreseeable future due to increasingly frequent and intense natural catastrophes like floods and famine. Disinformation on climate change has severely delayed and is still hindering the implementation of life-saving measures called for by the scientific evidence documented by the IPCC. In addition, it has obstructed the emergency response called for by the United Nations. Fossil fuel industry leaders have spread disinformation with impunity, despite scientific evidence of the consequences of fossil fuel use to humans and the environment. The oil industry has funded and conducted disinformation campaigns through such organizations as the Global Climate Coalition⁷ and the Western Fuels Association, which were funded to promote fossil fuel use.

The WCC appeals for the ICC to recognize the criminal nature of such acts of disinformation and of continued fossil fuel financing in the face of the clear scientific consensus, in view of the potentially genocidal and ecocidal nature of the foreseeable consequences of such acts. This appeal is anchored in a moral imperative and in line with many statements, including by UN Secretary-General in Davos in January 2023: “Some in Big Oil peddled the big lie. And like the tobacco industry, those responsible must be held to account.”⁸ The following are additional statements and research evidence:

- The *Banking on Climate Chaos: Fossil Fuel Finance Report 2023*, put out annually by a coalition of environmental groups, shows that fossil fuel financing from the world’s 60 largest banks has reached 5.5 trillion US dollars in the six years since the Paris Agreement was adopted, with 742

⁵ Laura Paddison, “Climate Summit Leader Defends Controversial Comments That Alarmed Scientists and Sent Shockwaves through Meeting,” *CNN*, 5 December 2023, <https://edition.cnn.com/2023/12/03/climate/cop28-al-jaber-fossil-fuel-phase-out/index.html>.

⁶ “Climate Change causes 2 million deaths in 50 years”, May 2023, [WMO report](#), analysis by Al Jazeera

⁷ The audacious PR plot that seeded doubt about climate change, BBC, July 2022 <https://www.bbc.com/news/science-environment-62225696>

⁸ For the full statement, see the “Secretary-General’s remarks at the World Economic Forum,” United Nations, 18 January 2023, <https://www.un.org/sg/en/content/sg/statement/2023-01-18/secretary-generals-remarks-the-world-economic-forum>; see also a summary in Sam Meredith, “‘Big Oil Peddled the Big Lie’: UN Chief Slams Energy Giants for Ignoring their Own climate Science,” *CNBC*, 28 January 2023, <https://www.cnbc.com/2023/01/18/un-slams-oil-and-gas-giants-for-ignoring-their-own-climate-science.html>.

billion US dollars in 2021.⁹ ‘Carbon bombs’ funded by these banks are set to trigger catastrophic climate breakdown, pushing the global climate system beyond key tipping points.¹⁰

- According to a report by UNICEF, children are especially at risk and “every child on the planet is already affected by climate change.”¹¹

Climate change denial and disinformation continues despite the increasing certainty and urgency of the scientific projections on climate change by the world’s leading climate scientists, documented in IPCC reports.¹² Examples of these engines of climate change denial and disinformation include CLINTEL,¹³ founded 2019 by a former executive of a fossil fuel company, the CO₂ Coalition,¹⁴ and CLEXIT.¹⁵ In addition, there is evidence of agents of fossil fuel companies infiltrating climate protection groups¹⁶ and EU decision-making processes.¹⁷

2. WCC recommendations for the ICC OTP environmental crimes policy

⁹ *Banking on Climate Chaos: Fossil Fuel Finance Report 2023* (Oil Change International, Rainforest Action Network, BankTrack, Indigenous Environmental Network, Reclaim Finance, Sierra Club, and Urgewald, 2023), <https://www.bankingonclimatechaos.org/>.

¹⁰ Damian Carrington and Matthew Taylor, “Revealed: The ‘Carbon Bombs’ Set to Trigger Catastrophic Climate Breakdown,” *The Guardian*, 11 May 2022, <https://www.theguardian.com/environment/ng-interactive/2022/may/11/fossil-fuel-carbon-bombs-climate-breakdown-oil-gas>.

¹¹ “The Impacts of Climate Change Put Almost Every Child at Risk,” UNICEF – For Every Child, 19 August 2021, <https://www.unicef.org/stories/impacts-climate-change-put-almost-every-child-risk>.

¹² See *Climate Change 2023: Synthesis Report: Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, ed. H. Lee and J. Romero (Geneva: IPCC), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf.

¹³ “Climate Intelligence Foundation (CLINTEL), Climate Disinformation Database, *DeSmog*, <https://www.desmog.com/climate-intelligence-foundation-clintel/>. See also Roland Lloyd Parry, “Climate ‘Declaration’ Recirculates Debunked Claims,” *AFP Fact Check*, 7 September 2022, <https://factcheck.afp.com/doc.afp.com.32HG6HR>; and Kristoffer Tighe, “Experts Debunk Viral Post Claiming 1,100 Scientists Say ‘There’s No Climate Emergency,’” *Inside Climate News*, 23 August 2022, <https://insideclimatenews.org/news/23082022/experts-debunk-viral-post-claiming-1100-scientists-say-theres-no-climate-emergency/>.

¹⁴ “CO₂ Coalition,” Climate Disinformation Database, *DeSmog*, <https://www.desmog.com/co2-coalition/>.

¹⁵ “Climate Exit (Clexit),” Climate Disinformation Database, *DeSmog*, <https://www.desmog.com/clexit/>.

¹⁶ Oliver Milman, “‘Double Agents’: Fossil-Fuel Lobbyists Work for US Groups Trying to Fight Climate Crisis,” *The Guardian*, 5 July 2023. See also “Investigation Examines Fossil Fuel Industry Influence at elite American Universities,” *BMJ Newsroom*, 14 September 2022, <https://www.bmj.com/company/newsroom/investigation-examines-fossil-fuel-industry-influence-at-elite-american-universities/>.

¹⁷ “Exposed: How Big Oil and Gas Infiltrated EU Politics,” *Friends of the Earth Europe*, 25 October 2021, <https://friendsoftheearth.eu/press-release/exposed-big-oil-gas-infiltrated-eu-politics/>; Katriona McKinnon, “Climate Crimes Must Be Brought to Justice,” UNESCO, 7 August 2019, <https://www.unesco.org/en/articles/climate-crimes-must-be-brought-justice-0>.

- We recommend that the ICC recognize and incorporate within its legal framework that the acts of fossil fuel company executives that financed, promoted, and orchestrated disinformation on global warming since the 1970s, allowing for massive fossil fuel expansion and consequent increases in greenhouse gas emissions, constitute crimes against humanity.
- We recommend that the ICC OTP undertake prosecutions to stop the ongoing and new attempts to promote climate change disinformation and denial.
- We recommend the ICC OTP formulate a specific policy for the prevention of disinformation on climate change and fossil fuel financing. A public policy on this specific issue could encourage and accelerate behaviour change among today's leaders and decision-makers.

The focus of these recommendations is to save human lives and reduce the physical, psychological, developmental and environmental harm caused by the extraction, burning, and funding of fossil fuels, which is the result of deliberate disinformation strategies promoted and led by specific individuals associated with the fossil fuel industry.

3. Suggested environmental crimes

The WCC encourages the new ICC OTP environmental crimes policy to address the following issues:

- Holding accountable those responsible for active and deliberate disinformation about global warming based on evidence documenting the extent to which they knew the lethal consequences of the extraction and burning of fossil fuels.
- Recognizing the harms caused to children by fossil fuel company executives and others associated with the fossil fuel industry who have funded or implemented climate change disinformation campaigns.
- Holding accountable those financing new 'carbon bombs'.¹⁸ This is an urgent measure to halt further increase of CO₂ emissions¹⁹ before key tipping points are breached and the climate catastrophe becomes irreversible.
- Holding accountable and encouraging banks and asset owners to stop financing new fossil fuel extraction and expansion, given the threat posed to the lives of children and future generations of life on earth.

¹⁸ "Carbon Bombs under the Spotlight," *CarbonBombs.org*, <https://www.carbonbombs.org/>.

¹⁹ World Meteorological Organization, "Press Release: United in Science: We Are Heading in the Wrong Direction," 13 September 2022, <https://www.undrr.org/news/united-science-2022-we-are-heading-wrong-direction>.

- Recognizing the crime of ‘**ecocide**’, and considering the dissemination of climate change disinformation and the financing of new fossil fuel extraction and expansion as ecocide crimes, given their role in the destruction of the environment and the threat to billions of children, young people and future generations.

4. Why the above-mentioned crimes fit into the ICC’s jurisdiction

The ICC was established to end impunity for the most serious crimes. Addressing the impunity of those propagating deliberate disinformation on global warming is an essential step to stopping the ongoing expansion of fossil fuels, which is threatening humanity and the living planet.

The Rome Statute grants ICC jurisdiction over four international crimes, one of which is crimes against humanity – defined in Article 7(1) as a list of specific acts “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. Among the acts listed, Article 7(1)(k) refers to “Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”.

In our submission, the dissemination of climate change disinformation and the financing of new fossil fuel extraction and expansion may be considered as crimes against humanity under this provision of the Rome Statute. Knowingly spreading disinformation on climate change and financing new ‘carbon bombs’ threaten both the physical and mental integrity of people around the world, including ‘eco-anxiety’ among children and youth.¹⁷

The Sacchi decision²⁰ on the rights of the child also illustrates the tremendous physical suffering of children due to climate change. The UN's Committee on the Rights of the Child (CRC) recognizes that "as children, the authors are particularly impacted by the effects of climate change, both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime, in particular if immediate action is not taken." Moreover, of particular interest in this case is that "the Committee concludes that the authors have sufficiently justified, to establish jurisdiction, that the impairment of their Convention rights as a result of the State party's acts or omissions regarding the carbon emissions originating within its territory was reasonably foreseeable."²¹ The CRC, therefore, acknowledges the fact that children and youth are suffering both mentally and physically, which is the very essence of Article 7(1)(k) of the Rome Statute.

The element of intent is addressed by the fact that several fossil fuel companies have known for some 50 years that climate change is the consequence especially of increasing fossil fuel use, but they still hid it from the public, actively spreading disinformation instead of sharing the evidence they had.

Preconditions to the exercise of ICC's jurisdiction are set out under Article 12 of the Rome Statute, namely that (i) the crime must have been committed within the time frame specified in Article 11 of the Statute (temporal jurisdiction), and (ii) the crime must be against a national citizen and on the territory of a member state of the ICC.

²⁰ https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20211008_Communication-No.-1042019-Argentina-Communication-No.-1052019-Brazil-Communication-No.-1062019-France-Communication-No.-1072019-Germany-Communication-No.-1082019-Turkey_decision.pdf

²¹ [Sacchi decision](#), 10/10/08/2021, Committee on the Rights of the Child: para 10.13 and para 10.14

A consequential number of such crimes (i) occurred after the date of ratification of the Rome Statute for at least one country specified in the case synopsis²² and (ii) occurred on the territory of at least one ICC member state (i.e., a country that ratified the Rome Statute).²³ Recent cases have demonstrated that jurisdiction can be established when the crime occurs across multiple countries, even if not all of those countries are ICC member states, as long as a component of the crime occurred on the territory of a member state.²⁴ Case law has also established that nationals of a country that is not a member state may still be liable under the ICC Rome Statute if their acts are linked to the territory of a member state.²⁵ This effectively means that most countries and nationals in the world fall within the jurisdiction of the ICC regarding environmental crimes, since these crimes impact all countries worldwide. It is essential to consider that senior executives of the fossil fuel industry meet the preconditions to jurisdiction. Many of these senior executives are based in countries that were member states following the Rome Statute's entry into force in 2002. Many executive meetings occurred on the territories of member states. The harmful impacts of disinformation and fossil fuel industry financing are felt across all ICC member states.

4.1 Factual and legal assessment of the suggested crimes

4.1.1 Crime base: Inflicting great suffering or serious injury to body or to mental or physical health

For the purposes of this public consultation, the fact pattern constituting the “other inhumane acts” of disinformation on climate change is as follows:

- i. The infliction of great suffering or serious injury to body or to mental or physical health with the awareness of the factual circumstances that established the character of the act
- ii. through significant deleterious effects on human health and welfare
- iii. due to the change of climate attributed directly or indirectly to human activity
- iv. that has altered the composition of the global atmosphere in a manner additional to the natural climate variability observed over comparable time periods.

²² By clicking on the region of ICC member states, the start date of temporal jurisdiction for each country is listed below the flag images, see: <https://asp.icc-cpi.int/states-parties/asian-states>.

²³ See the list of the 123 ICC member states at: <https://asp.icc-cpi.int/states-parties>.

²⁴ See, for example, the opening of an investigation in Afghanistan (an ICC member state) and the inclusion of events in non-member states concerning non-member state nationals who were considered “sufficiently linked” to the situation under investigation: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_00828.pdf.

²⁵ See, for example, the opening of an investigation in Palestine (a member state) and the inclusion of events in non-member states: <https://www.icc-cpi.int/palestine>.

The legal foundation of this submission is that the fact pattern of disinformation on climate change and fossil fuel financing constitute the legal elements of the residual category of crimes against humanity of “other inhumane acts” under Article 7(1)(k) of the ICC Rome Statute.

There is overwhelming evidence establishing the crime base of deliberate disinformation on climate change as a crime against humanity of “other inhumane acts.” The legal elements of “other inhumane acts” require a demonstration that the acts are “of a similar character” to other enumerated acts under crimes against humanity. For this reason, the proof of harm caused by disinformation on climate change will be assessed according to factual categories that are of a similar character to the enumerated acts. In our submission, the deaths, serious physical and mental injuries, disease, food insecurity, and forcible transfer of populations that are actual and foreseeable consequences of more frequent and more destructive extreme weather events due to climate change are of similar character to the other enumerated acts, as are the disproportionate impacts on specific identifiable national, ethnic, and cultural groups – such as the populations of low-lying island states and Indigenous peoples culturally connected with environments facing destruction through climate change impacts.

WCC asks the Prosecutor to consider initiating investigations and proceedings against fossil fuel company executives and others who promoted or implemented climate change disinformation campaigns, and who funded international networks of organizations devoted to climate change disinformation and denial.²⁶ The fact that they have been able to act with impunity has allowed for a proliferation of new disinformation campaigns, such as those of CLINTEL and the CO₂ Coalition, and the infiltration of decision-making bodies and climate protection groups by fossil fuel industry agents. The criminal liability of senior executives is generated by their authorization and funding of multiple acts of strategic disinformation by others. These acts have impeded timely political action on climate change.

Climate change is defined under Article 1(2) of the UNFCCC as “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.” Article 2 of the UNFCCC describes the objective of the convention in terms of “stabilization of greenhouse gas

concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.” In addition, Article 1 of the UNFCCC includes in its definition of the adverse effects of climate change “significant deleterious effects on... the operation of socio-economic systems or

²⁶ See also Constantine Boussalis and Travis G. Coan, “Text-Mining the Signals of Climate Change Doubt,” *Global Environmental Change* 36 (2016), <https://www.sciencedirect.com/science/article/abs/pii/S0959378015300728>.

on human health and welfare.”²⁷ This demonstrates that international law recognizes that the legal concept of climate change is tied directly to the legal elements of the right to a clean, healthy, and sustainable environment (UN Human Rights Council resolution 48/13 of 2021). Consequently, the infliction of great suffering or serious injury to body or mental or physical health due to deliberate or reckless acts that contribute significantly to key drivers of climate change should no longer continue with impunity but should be prosecuted as criminal. Therefore, the WCC requests the ICC OPT to proceed with appropriate measures against perpetrators of environmental crimes.

The WCC asks for the recognition of intent as required by Article 30 of the Rome Statute, which is established when the accused is “aware that it [in this case, great suffering from the consequences of disinformation on climate change] will occur in the ordinary course of events” as a result of their acts.²⁸ ICC jurisprudence has clarified that this involves a two-step assessment. The first is the suspect’s awareness of the substantial likelihood that their actions or omissions would result in the realization of the objective elements of the crime. The second is the suspect’s decision to carry out their actions or omissions despite such awareness. There is no requirement that the accused wanted or hoped to cause the consequences. These legal elements would be established through proving the ongoing contributions of senior corporate executives to the common purpose of maximizing fossil fuel industry profits while being aware of the resulting climate change harm and suffering, such as through access to scientific reports establishing the nexus between fossil fuel use and climate change.

4.1.2 Mode of responsibility suggested by the WCC

There are two modalities of the third and final component of proving an international crime: (i) “command responsibility” under Article 28 of the ICC Rome Statute, or (ii) “individual responsibility” under Article 25. Regarding individual responsibility under Article 25.

As set out under Article 25, individual responsibility encompasses a range of modes wherein an accused may be liable based on their direct commission or based on accessorial liability, such as through aiding and abetting. Of note are the two forms of “common purpose” liability, where multiple perpetrators act in concert. The first form is “co-perpetration” under Article 25(3)(a) and the second form is the residual provisions under Article 25(3)(d). The co-perpetration concept under Article 25(3)(a) is distinct insofar as it assigns principal liability for the crime as a form of commission (as opposed to accessorial liability),

²⁷ UNCF, “United Nations Framework Convention on Climate Change,” <https://unfccc.int/resource/ccsites/zimbab/conven/text/art01.htm>.

²⁸ ICC, *Rome Statute*, Art.30(2)(b).

whereas under Article 25(3)(d) the responsibility is through the contribution of the perpetrator (as opposed to direct commission) and is therefore a form of accessorial liability. However, all these modalities are distinct from conspiracy, which is a purely inchoate crime based on the agreement itself and is not included under the ICC Rome Statute.

The notion of co-perpetration under Article 25(3)(a) of the ICC Rome Statute was set out in the first case at the ICC, wherein the judges established the legal elements for the notion of co-perpetration based on joint control over the crime: (i) the existence of a common plan or agreement between two or more persons and (ii) coordinated essential contributions by each co-perpetrator.

Regarding the common plan, the judges clarified that it “need not be explicit and that its existence can be inferred from the subsequent concerted action of the co-perpetrators.” However, the plan must involve “an element of criminality,” which the judges explained to mean

- i. that the co-perpetrators have agreed
 - a. to start the implementation of the common plan to achieve a non-criminal goal, and
 - b. to only commit the crime if certain conditions are met; or
- ii. that the co-perpetrators
 - a. are aware of the risk that implementing the common plan (which is specifically directed at the achievement of a non-criminal goal) will result in the commission of the crime, and
 - b. accept such an outcome.

It is not necessary that the accused shared the group’s intention to commit the crime, only that they intended their contribution with an awareness of contributing to the actions of the group’s common purpose. Only the crimes that the group intended to commit (i.e., that fall within the common purpose), and crimes committed in the ordinary course of the events, can be attributed to the group. The ICC judges have clarified that the contribution of the accused to “the commission of a crime by a group acting with a common purpose must at least be significant.” The jurisprudence has summarized that the legal elements under Article 25(3)(d) are that

- i. a crime within the jurisdiction of the Court has been committed;
- ii. the commission or attempted commission of such a crime was carried out by a group of persons acting with a common purpose;
- iii. the accused has delivered a significant/essential contribution to the commission of the crime;
- iv. their contribution was intentional; and
- v. the contribution of the accused was made in knowledge of the intention of the group to commit

a crime.

The words “common purpose” imply that the scope of the common purpose is identified, although it is not necessary that each single group member is identified nor that the common purpose was elaborated upon or formulated beforehand. It is also not required that the group pursued a common purpose which is specifically directed at the commission of the crime, “[n]or must the group pursue a purely criminal purpose or must its ultimate purpose be criminal. Hence, a group with a political and strategic goal which also entails criminality, or the execution of a crime may constitute a group acting with a common purpose.”²⁹

The main distinction between the legal elements under Article 25(3)(a) and (d) is that under Article 25(3)(d) there is no need to meet the co-perpetration test under Article 25(3)(a) that the accused could have potentially frustrated the crime if they withdrew their own essential contribution. In comparison, contribution under Article 25(3)(d) merely has “a bearing on the commission of the crime” in that it is more than inconsequential and influences the commission of the crime. Also, under Article 25(3)(d), the accused need not be a member of the group with the common purpose and could be an outsider providing any form of contribution to the common purpose. In addition, the accused does not need to share the group intention to commit the ultimate crime but merely have knowledge of the intention of the group.

Senior corporate executives manufactured doubt in climate change science, entrenched dependency on their products regardless of climate change science indicating the extent of global consequences, fostered delay in responding to climate change, implemented deception regarding the true solutions to climate change, and ensured their global dominance through lobbying and other means. These intentional contributions to a deleterious common purpose continue to be made with full knowledge of the great suffering, serious injury, and physical and mental harm resulting from disinformation on fossil fuel-induced climate change.

Fossil fuel company senior executives had knowledge of the scientific research into climate change impacts, including the severe human suffering flowing from their common purpose of maximizing fossil fuel industry profits. Senior executives were also at the forefront of the petroleum industry’s public communications, even co-opting climate change for marketing purposes through ‘greenwashing’. Both through their own internal research and documentation on fossil fuel-induced climate change, corporate

²⁹ <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

executives were aware of the risk that implementing their common purpose would result in the commission of “other inhumane acts” contributing to climate change and its environmental and humanitarian impacts, and accepted such an outcome. This establishes the *mens rea* for the modes of responsibility of civilian command responsibility, co-perpetration, and contribution to the crime through any other means.

4.2 Admissibility suggested by the WCC

Under Article 17 of the Rome Statute, even if the grounds of jurisdiction are established, it is still necessary to assess whether the situation is admissible at the ICC. Admissibility comprises “complementarity” and “gravity.”³⁰ These two legal tests are required because the ICC can only intervene as a court of last resort, thereby encouraging ICC member states to take up investigations of grave crimes directly themselves.

4.2.1 Complementarity

With regard to complementarity, we highlight that most national laws do not permit national investigators to “pierce the corporate veil” to hold corporate executives responsible for criminal wrongdoing associated with their business activities.³¹

In this submission regarding disinformation by senior executives and the crime of deliberately contributing to the climate catastrophe, there are no relevant ongoing proceedings in member states that would render the case inadmissible. There are some national cases, but none of them address the harm caused to populations and children worldwide. Ongoing efforts to establish an ecocide law and the Fossil Fuel Non-Proliferation Treaty will take too long to meet the short window of time left to avoid irreversibility of the climate catastrophe and its consequences for humanity.

The recently published General Comment 26 of the UN Committee on the Rights of the Child underlines the current inadequate nature of national jurisdictions to address the number of deaths and tremendous suffering caused by climate destruction to children:

Effective remedies should be available to redress violations and promote social justice. Despite

³⁰ International Criminal Court, Office of the Prosecutor, *Policy Paper on Preliminary Exams*, November 2013, para. 81, https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf.

³¹ See Irshad Hameed, “The Doctrine of Limited Liability and the Piercing of the Corporate Veil in the Light of Fraud: A Critical Multi-Jurisdictional Study,” SSRN, 2013, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2282306.

children having been at the vanguard of several environmental and climate change cases and their recognition under the Convention as rights holders, children, due to their status, encounter barriers to attaining legal standing in many States, thereby limiting their means of asserting their rights in the environmental context. States should provide access to justice pathways for children, including complaint mechanisms that are child-friendly, gender-responsive and disability-inclusive, to ensure their engagement with effective judicial, quasi-judicial and non-judicial mechanisms, including child-centred national human rights institutions, for violations of their rights relating to environmental harm. This includes removing barriers for children to initiate proceedings themselves, adjusting the rules of standing and empowering national human rights institutions with mandates to receive complaints from children.³²

The UN Committee on the Rights of the Child affirms that there are obstacles preventing the access of youth and children to climate justice and it is the duty of the member states to remove these obstacles and let the youth make their voices heard. The ICC has an important complementary role to play in this regard.

4.2.2 Gravity

Similarly, the component of admissibility that requires demonstration that the allegations concern a matter of sufficient “gravity” is easily met. Climate change is causing extreme harm, including through the physical and psychological impacts of more frequent and increasingly destructive extreme weather events, forced transfer of populations through the displacement of millions of people as sea-levels rise and deserts advance, and the disproportionate impacts on specific population groups, especially environment-centred indigenous cultures. Moreover, these impacts are not limited in time, but are cumulative and millennial in nature, posing increasing threats to the sustainability of communities and of life on Earth. The gravity of these impacts – ranging from loss of life, physical and mental injury, and the destruction of property to the loss of nationhood, and ecological breakdown – is beyond doubt.

³² UNHR, “CRC/C/GC/26: General Comment No. 26 (2023) on Children’s Rights and the Environment with a Special Focus on Climate Change,” Office of the High Commissioner, 22 August 2023, Art. 4(d) para. 82–83, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crccgc26-general-comment-no-26-2023-childrens-rights>.

5. Conclusion

In conclusion, the WCC recommends that two types of criminal acts be addressed under the current Rome Statute as environmental crimes:

- **Climate disinformation:** The WCC calls for recognition that acts of climate disinformation, in light of evidence provided by the IPCC, are crimes in the context of today's climate emergency. Whether the disinformation comes from the fossil fuel company executives, or from those funded and acting on their behalf, it is lethal given the small window of time left to avoid the irreversibility of climate catastrophe. The harm to the physical and mental health of children and young people and the threat to their very survival require this recognition.
- **Financing new fossil fuel extraction and exploitation:** The WCC submits that it is essential to recognize the criminal nature of new investments in fossil fuels in today's context, in light of the climate science presented by the IPCC. Holding accountable the banks and asset owners that continue financing new fossil fuel extraction and exploitation is a matter of survival for today's children and future generations. Maximizing fossil fuel profits regardless of the harm caused to the world's population is the origin of extreme physical and psychological suffering. The most significant distress is carried by the world's children, who grow up with the perspective that the planet might become uninhabitable if CO₂ emissions continue to rise and are not rapidly reduced to net zero.

Leaders of the fossil fuel industry and their partners responsible for these crimes must be held accountable. Their current ability to act with complete impunity has encouraged the continuation of these collectively destructive acts in their own economic self-interests, while seeking to deflect responsibility through 'greenwashing' and through 'lawfare' against environmental activists.

In the submission of the WCC, it is hardly possible to imagine behaviour that more fully warrants the description of 'criminal', given that its consequences extend into the distant future and impinge upon the lives and livelihoods of all future generations, and on the future sustainability of the Earth, our common home.